BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.86.1101, 37.86.1102, and 37.86.1105 pertaining to Medicaid requirements and reimbursement for outpatient drugs	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 14, 2008, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on May 5, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) through (2) remain the same.

(3) "Maintenance medications" means oral tablet or capsule drugs:

(a) that have a low probability for dosage or therapy changes due to side effects;

(b) are subject to serum drug concentration monitoring or therapeutic response of a course of prolonged therapy;

(c) whose most common use is to treat a chronic disease state. Therapy with the drug is not considered curative or promoting of recover; and

(d) the drug is administered continuously rather than intermittently.

(3) and (4) remain the same but are renumbered (4) and (5).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS ~~DEFINITIONS~~ (1) through (4) remain the same.

(5) Each prescription shall be dispensed in the quantity ordered except that:

(a) remains the same.

(b) Notwithstanding the above, ~~prescriptions may not be dispensed in quantities greater than a 34-day supply.~~ maintenance medications may be dispensed in quantities sufficient for a 90-day supply or 100 units, whichever is greater. Other medications may not be dispensed in quantities greater than a 34-day supply. The department will post a list of current drug classes which will be considered maintenance medications and will be posted on the department's web site at http://medicaidprovider.hhs.mt.gov.

(6) through (8) remain the same.

(9) A provider shall maintain a signature log to act as proof of delivery of prescription drugs. Each recipient, or an individual acting on behalf of the recipient, must sign the log each time a prescription drug is delivered. For prescription drugs delivered to a nursing facility, the individual charged with ensuring the security of pharmaceutical supplies may sign the log after verifying delivery of all prescription drugs.

(9) through (9)(f) remain the same but are renumbered (10) through (10)(f).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, 53-6-141, MCA

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains the same.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) remains the same.

(b) The dispensing fees assigned shall range between a minimum of $2.00 and a maximum of ~~$4.86~~ $4.94.

(c) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to Administrative Rules of Montana (ARM) 37.86.1101 and 37.86.1102 that would allow Medicaid providers to dispense maintenance medications sufficient for a 90-day supply or 100 units, whichever is greater. Other medications would be dispensed in quantities as great as a 34-day supply. This would be a significant increase from the current rule limiting all medications to a 34-day maximum supply. The department is also proposing an amendment that would add a requirement that providers maintain a signature log for all prescriptions.

Finally, the department is proposing amendments to ARM 37.86.1105 that would implement a 1.67% increase to the Medicaid pharmacy dispensing fee as allowed by legislative appropriation. This would increase the maximum dispensing fee from $4.86 to $4.94 for in-state providers.

ARM 37.86.1101

The department is proposing a new definition to describe "maintenance medications" that would be subject to the 90-day or 100 unit dispensing limit as proposed in ARM 37.86.1102. For a further explanation, please see the discussion below.

ARM 37.86.1102

The department is proposing amendments to this rule that would allow Medicaid pharmacy providers to dispense maintenance medications in amounts sufficient for a 90-day supply or 100 units, whichever is greater. Other medications would be dispensed in quantities as great as a 34-day supply. This change is necessary for several reasons.

First, it would allow the department to mirror some of the most common third party carriers available to Medicaid recipients. These carriers often allow or mandate the greater 90-day quantities for maintenance medications. Medicaid recipients who currently have such a prescription plan are forced to choose between their primary insurance getting a 90-day supply and paying the copay, or using Medicaid for a shorter 34-day's supply. Technical constraints prohibit adjudicating the claim applying both benefits for the recipient. Recipients typically opt to file with Medicaid, forcing the department to "pay and chase" meaning the department pays first and seeks reimbursement through the other insurance. This option leaves Medicaid with an initial higher overall payment and an administrative burden with a possibility that it may not collect from the primary insurer. The department estimates that $3.4 million dollars worth of prescriptions annually could have been billed to other insurances had this proposed policy been in effect. It is unknown how much actual cost savings this could have generated, but other insurance carriers typically pay 50-80% of the cost of the prescription when utilized.

Recent studies show that utilizing 90-day refill programs increases compliance and decreases overall health plan and member costs for those recipients who take medications for chronic diseases. See Impact of a 90-day retail refill program on prescription drug utilization and expenditures. Shawn X Sun, et al, Drug Benefit Trends, August 2007. The department is proposing that the 90-day refill allowance be limited to generic maintenance medications in chronic disease states, such as high blood pressure, heart disease, diabetes, and other medical conditions where compliance to medication regimens increases positive outcomes. The department is working closely with the Drug Utilization Review (DUR) board to develop a specific list of medications considered for the extended supply.

Cost savings would be realized by decreasing the dispensing fees paid by two-thirds, that is only one dispensing fee is charged to the department rather than three. In the case of generic maintenance medications, the cost of the medication is minimal. For example, the current prescription cost for a 34-day supply of lisinopril 10 mg is $6.97 total ($2.03 for the drug, plus a $4.94 dispensing fee). Multiplied by 3 months, it would cost the department $20.91 for 102 days of medication. The recipient's cost share would be $1.00 each time, a total of $3.00. If the recipient

were to pick up 100 doses of this prescription, the cost would be $10.91 ($5.97 for the cost of the drug plus a $4.94 dispensing fee). The recipient's cost share would be $1.00 for that prescription. Additional cost savings would be realized by billing other third party payors for the majority of the costs, as explained above.

The department previously used a widespread 90-day/100 dose program, which was discontinued because of cost concerns and the possibility of recipients receiving medications for those months that they might not be eligible for Medicaid. In this proposal, the department is limiting the increased days supply allowance to those generic medications where the benefits of increased compliance outweigh the potential for losses. In the example above, the department may pay an extra $3.94 if the recipient filled 100 days of the medication and then was ineligible for Medicaid for the next two months. However, if the recipient remained on Medicaid and filled the allowed 34-day supply each month the department would pay $9.94 more than if the recipient was allowed to fill 100 units of the medication.

The DUR board suggested starting the program with generic oral medications used to treat high blood pressure, heart disease, diabetes, thyroid disorders, and with oral birth control medications. In State fiscal year 2007, 67,271 prescriptions were reimbursed for the identified maintenance drugs totaling over $1.19 million. $300,000 of this prescription expense was for dispensing fees. By decreasing the total amount of claims for these medications, the department may save $200,000 in dispensing fees alone ($89,107 state share). The cost savings realized by following with other third party carriers is unknown at this time; however, over state fiscal year 2007, 544 claims with third party liability listed attempted to enter a 90 or 100 day supply and were rejected.

The department is also proposing an amendment to this rule that would require Medicaid pharmacy providers to maintain a signature log for all prescriptions. This proposal follows a recommendation from both interdepartmental and contracted auditors. This measure would further assure that the medications paid by Montana Medicaid get to the appropriate recipients. The fiscal impact from this provision cannot be determined; however, there is cost savings anticipated from audit recovery.

ARM 37.86.1105

The department is proposing a 1.67% increase to the Medicaid dispensing fees for pharmacy providers, as allowed by legislative appropriation. This will increase the maximum dispensing fee from $4.86 to $ 4.94 for in-state providers. Out-of-state and new providers will still be paid a $3.50 dispensing fee and those in-state pharmacies who do not submit a dispensing fee at the request of the department will be paid a $2.00 dispensing fee. Also, pharmacies with a cost to dispense of less than $4.94 will receive their actual cost. The department anticipates this proposal would increase Medicaid prescription drug spending by $38,184 annually. $26,167 of this increase is federal share, $12,106 state share. This increase is the same for all Medicaid provider types as intended by the 2007 Montana Legislature when it

made the appropriation.

Fiscal effects

The department analyzed the impact of these rules using generally accepted statistical methods. The overall impact to the budget as a result of the proposed changes will be an annual savings of $36,773 state share funds.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 22, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State April 14, 2008.